

**China Press Bhd & Anor v
Pemandangan Sinar Sdn Bhd**

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S2-23-22 OF 2000
KAMALANATHAN RATNAM J
16 APRIL 2001

Civil Procedure — *Injunction* — *Interim injunction* — *Interim injunction to restrain defamatory publication* — *Defendant claimed to be most favourable Chinese newspaper* — *Serious question to be tried* — *Balance of convenience* — *Whether injunction should be granted* — *Adequacy of damages*

The first plaintiff published a daily nationwide Chinese language newspaper since 1946. The second plaintiff also published a daily nationwide newspaper since about 1924. The defendant published a daily nationwide newspaper in the Chinese language under the name and style of *Sin Chew Jit Poh*. The defendant published in the *Sin Chew Jit Poh* an advertisement claiming *Sin Chew Jit Poh* to be the most favorable Chinese newspaper among the city residents and the Chinese newspaper with the most readers in Kuala Lumpur and Petaling Jaya. The plaintiffs contended that by comparing the plaintiffs' newspapers with the defendant's, and by contending that their readership far exceeded that of the plaintiffs, the plaintiffs had been defamed. The plaintiffs pleaded that the survey materials purportedly provided by Taylor Nelson Sofres Malaysia Sdn Bhd ('Taylor Nelson') were commissioned by the defendant based on a survey done on an ad hoc and random basis and that the defendant published the comparisons recklessly and maliciously without consulting the plaintiffs and without their consent. For the plaintiffs, the said words in their natural and ordinary meaning meant that the newspaper published by the plaintiffs were of inferior quality. Alleging that their business reputation and credibility had been seriously damaged, the plaintiffs prayed for an interim interlocutory injunction and for damages, including exemplary damages for libel and costs.

Held, dismissing the application:

- (1) If the defendant had merely stated that it ran the No 1 newspaper in the country, that would be mere puffing. But in this case, the defendant had made clear references to the plaintiffs' rival newspapers and made statements. It was for the court to find if such advertisements as referring to the plaintiffs were false (see p 74A).
- (2) The plaintiffs said that the advertisements were false, the defendant said they were true. It was not for the court at this stage of the proceedings to make such a finding which ought to be the function of the trial judge. Even on the issue of malicious falsehood, the plaintiffs would have to prove that the words as

- A contained in the advertisements were calculated to cause pecuniary damage. That again was for the trial court to ascertain (see p 74A–B).
- (3) The court was guided by the well-known principles relating to the grant or refusal of an injunction. Both parties had shown that they were well-established and well-settled. If the plaintiffs succeed in both causes of action, the plaintiffs no doubt would be entitled to damages and also a permanent injunction. However, in this case the balance of convenience would be best satisfied if the parties were left to maintain their present status quo. Since damages would be an adequate remedy, this case did not merit interference by way of an injunction (see p 74B–D).
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[Bahasa Malaysia summary]

- D Plaintiff pertama menerbitkan satu akhbar bahasa Cina harian berpasaran seluruh negara sejak 1946. Plaintiff kedua juga menerbitkan satu akhbar berpasaran seluruh negara sejak 1924. Defendan pula menerbitkan satu akhbar harian berpasaran seluruh negara atas nama *Sin Chew Jit Poh*. Defendan menerbitkan dalam *Sin Chew Jit Poh* satu iklan yang menuntut bahawa *Sin Chew Jit Poh* adalah akhbar bahasa Cina yang paling disukai di kalangan penghuni bandar dan adalah akhbar yang paling ramai pembaca di Kuala Lumpur dan Petaling Jaya. Plaintiff-plaintif mendakwa bahawa dengan membandingkan akhbar plaintiff-plaintif dengan akhbar defendan, dan dengan menuntut bahawa jumlah pembacanya jauh lebih tinggi dari jumlah pembaca akhbar plaintiff-plaintif, plaintiff-plaintif telah difitnah. Plaintiff-plaintif mengatakan bahawa bahan-bahan banci yang dikatakan dibekalkan oleh Taylor Nelson Sofres Malaysia Sdn Bhd (“Taylor Nelson”) adalah sebenarnya atas arahan defendan dan berdasarkan satu banci yang dilakukan secara ad hoc dan rawak, dan bahawa defendan menerbitkan perbandingan tersebut dengan cuai dan niat jahat tanpa berunding dengan plaintiff-plaintif dan tanpa kebenaran mereka. Bagi plaintiff-plaintif, perkataan-perkataan tersebut dalam maksudnya yang sebenar dan biasa membawa pemahaman bahawa akhbar plaintiff-plaintif bermutu rendah. Plaintiff-plaintif mendakwa bahawa reputasi perniagaan dan kebolehpercayaan mereka telah terjejas, dan menuntut injunksi interlokutori sementara dan gantirugi, termasuk gantirugi teladan untuk fitnah dan kos.
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Diputuskan, menolak permohonan tersebut:

- (1) Jika defendan hanya menyatakan bahawa ia mempunyai akhbar terunggul di seluruh negara, ia merupakan cakap besar semata-mata. Dalam kes ini, defendan merujuk secara khusus kepada akhbar plaintiff-plaintif dan membuat pernyataan. Adalah tanggungjawab mahkamah untuk memutuskan sama ada iklan-
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iklan sedemikian seperti yang merujuk kepada plaintiff-plaintiff adalah palsu (lihat ms 74A).

- (2) Plaintiff-plaintiff mengatakan bahawa iklan-iklan tersebut adalah palsu, manakala defendan pula mengatakan bahawa ia benar. Ia bukan tugas mahkamah pada peringkat ini untuk membuat keputusan seperti ini kerana ini merupakan tugas hakim bicara. Termasuk juga isu kepalsuan berniat jahat, plaintiff-plaintiff mesti membuktikan bahawa perkataan-perkataan yang terkandung dalam iklan-iklan tersebut bertujuan menyebabkan kerugian kewangan. Ini juga isu untuk dipastikan oleh mahkamah bicara (lihat ms 74A–B).

- (3) Mahkamah dibimbing oleh prinsip-prinsip mantap mengenai kebenaran atau keengganan memberikan injunksi. Kedua-dua pihak telah membuktikan bahawa mereka mempunyai kedudukan yang mantap. Jika plaintiff-plaintiff berjaya dalam kedua-dua kausa tindakan, mereka pasti berhak mendapat gantirugi dan injunksi kekal. Walau bagaimanapun, dalam kes ini, imbalan kesenangan akan dipenuhi jika pihak-pihak dibiarkan mengekalkan keadaan status quo kini. Oleh kerana gantirugi merupakan remedi yang memadai, kes ini tidak memerlukan campurtangan dalam bentuk injunksi (lihat ms 74B–D).]

Notes

For cases on interim injunctions generally, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2045–2079.

Cases referred to

Lyne v Nicholls (1906) 23 TLR 86 (refd)

Legislation referred to

Defamation Act 1957 s 6

Rules of the High Court 1980 O 8 r 3, O 20 rr 5(5), 8

Cyrus V Das (Trevor George De Silva and Jonathan Yoon with him) (Shook Lin & Bok) for the plaintiffs.

RR Sethu (Yiew Voon Lee with him) (CH Yeoh & Yiew) for the defendant.

Kamalanathan Ratnam J:

Facts

The first plaintiff publishes a daily nationwide newspaper in the Chinese language since about 1946. The second plaintiff also publishes a daily nationwide newspaper since about 1924. The defendant publishes a daily nationwide newspaper in the Chinese language under the name and style of *Sin Chew Jit Poh*. Commencing on or about 13 March 2000 the defendant

- A published in the *Sin Chew Jit Poh* a full length page advertisement (annex A) and on a separate page headed *Metro Edition* (annex B) in bold and significant Chinese characters words and/or messages which when interpreted in English read as follows:

Annexure A:

- B Sin Chew Jit Poh dated 3 April 2000 (Monday)
Metro Edition Advertisement (P 9)

UNDENIABLE FACTS
REPEATEDLY PROVEN

- C Sin Chew Jit Poh
No 1 in Kuala Lumpur/Petaling Jaya

- D Since 1992, SIN CHEW JIT POH is the Malaysian Chinese Newspaper with the highest number of readers. According to the International Research Corporation TAYLOR NELSON SOFRES in their January 2000 research, SIN CHEW JIT POH has as many as 230,000 readers in Kuala Lumpur and Petaling Jaya, compared to the nearest 'CHINA PRESS' (209,000 readers), it has exceeded 21,000 readers! Being an all angle newspaper which is continuously improving, Sin Chew Jit Poh has again proven its excellent actual strength, it is definitely the most favorable Chinese newspaper among the city residents.

- E SIN CHEW JIT POH
The Supremacy of Righteousness
Human Sympathy Exists Among the People

Annexure B:

- F Sin Chew Jit Poh dated 3 April 2000 (Monday)
Metro Edition

KUALA LUMPUR
NO 1
PETALING JAYA

- G The Chinese newspaper with the most readers in Kuala Lumpur/Petaling Jaya area
- | | | |
|-------------------------|------------------------|--------------------------|
| <i>Sin Chew Jit Poh</i> | <i>The China Press</i> | <i>Nanyang Siang Pao</i> |
| 230,000 | 209,000 | 125,000 |
- H Sources from *Taylor Nelson Sofres International Research Corp* January 2000 Marketing Research.

Case for the plaintiffs

- I The plaintiffs contend that by comparing the plaintiffs' newspapers with the defendant's, and by contending that their readership far exceeded that of the plaintiffs, the plaintiffs have been defamed. The plaintiffs pleaded that the survey materials purportedly provided by Taylor Nelson Sofres Malaysia Sdn Bhd ('Taylor Nelson') were commissioned by the defendant

based on a survey done on an ad hoc and random basis and that the defendant published the comparisons recklessly and maliciously without consulting the plaintiffs and without their consent. It was also the case for the plaintiffs that the said words in their natural and ordinary meaning meant and were understood to mean that the newspapers published by the plaintiffs are of inferior quality. The plaintiffs also relied on innuendo, alleging that the plaintiffs' business reputation and credibility have been seriously damaged. The plaintiffs prayed for an interim interlocutory injunction and for damages including exemplary damages for libel and costs.

Case for the defence

Whilst admitting to publishing the annexures referred to earlier, the defendant contended that it had commissioned a readership survey of the Chinese newspapers (including the defendant's own newspapers) by Taylor Nelson in the Klang Valley and in certain parts of Selangor and published the results of the said survey. The defendant denied that the said advertisements bore or were capable of bearing in any sense the meanings relied on by the plaintiffs. The defendant contended that Taylor Nelson undertook the survey objectively and according to the methods and principles ordinarily adopted and recognized by such agencies. Raising various other defences, the defendant sought a dismissal of the plaintiffs' suit.

Findings of the court

The plaintiffs then took out a summons (encl 3) for an injunction to restrain the defendant or its agents from further publishing, dissipating, circulating, distributing, comparing and/or citing the plaintiffs by comparison in any articles, publications, advertisements and/or printed matters in any way until the final disposal of the said suit against the defendant. Enclosure 3, when filed, had set out the grounds as being founded solely on defamation, either by imputation or innuendo. However, on 2 June 2000, the plaintiffs' summons to amend the writ of summons and statement of claim was heard. Dato' Dr Das for the plaintiffs informed the court that whilst the earlier cause of action on which the writ was premised, and the application for an injunction were based on defamation, the plaintiffs sought an amendment under O 20 r 5(5) of the Rules of the High Court 1980 ('the RHC') to add a further cause of action in malicious falsehood. Dato' Sethu for the defendant, had no objection to the amendment except that his view was that the amendment sought should not affect the pending application for an injunction (encl 3). In other words, he contended that the amendment ought not to affect the application (encl 3) which must be premised only based on the original pleading. I gave an order in terms of encl 20 and allowed the amendment to the writ of summons and to the statement of claim with costs to the defendant.

The plaintiffs then took out a notice of motion (encl 27) to amend encl 3 in that the injunction asked for was now to be also based on the

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- A additional cause of action of malicious falsehood. When encl 27 came up for hearing, Dato' Sethu for the defendant informed the court that he wished to take a preliminary objection to encl 27 in that the said notice of motion did not comply with O 8 r 3 of the RHC. After hearing submissions from both parties, I upheld Dato' Sethu's preliminary objection. However, since the plaintiffs could in any event apply to amend orally under O 20 r 8 of the RHC, I exercised my discretion and allowed an oral application to amend. I then proceeded to hear encl 27. Since Dato' Sethu seriously had no objection subject to his earlier arguments, I allowed the amendment sought under encl 27 to include the additional cause of action of malicious falsehood when asking for the injunction in respect of encl 3.
- B
- C Enclosure 3
- In submitting for the injunction, Dr Das pointed out that the defendant had three modes of circulating its newspapers, namely:
- D (a) the daily edition circulated nationwide;
(b) the *Metro Edition* circulated in the morning;
(c) the evening edition circulated in the Klang Valley and in parts of Johor, Negeri Sembilan, Perak and Pahang.
- E The dispute in question actually centred around the circulation and readership of the respective newspapers in the area of the Klang Valley and as to whether the series of advertisements commenced by the defendant in its newspaper beginning 13 March 2000, where reference was made to the plaintiffs' newspapers constituted both a libel and malicious falsehood of and concerning the plaintiffs. The plaintiffs relied on *Lyne v Nicholls* (1906) 23 TLR 86. In that case, the plaintiff and the defendant were the owners of newspapers circulating in the same locality, and the defendant published a statement, which was untrue, that 'the circulation of his newspaper 'is 20 to 1 of any other weekly paper' in the district. He further added 'where others count by the dozen, we count by the hundred'. The court held that the said statements were not a mere puff by the defendant of his own newspaper, but amounted to an untrue disparagement of the plaintiff's newspaper and were actionable on proof of actual damage, and that since in that case no damage was proved, the action failed. Relying on s 6 of the Defamation Act 1957, the plaintiffs submitted that since it was not necessary to allege or prove special damage in respect of a case of malicious falsehood, so long as it could be shown that the words either published in writing or in other permanent form, upon which the action is founded are calculated to cause pecuniary damage to the plaintiffs, the injunction ought to be granted if the court was not minded to do so on libel. The plaintiffs contended that I ought not place any reliance on the defendant's statistics as contained in the advertisements as they were unreliable and false. The plaintiffs argued that the defendant's motive was to unfairly garner the advertising business in the Chinese newspaper business for the Klang Valley by an unfair disparagement of the plaintiffs' newspapers through these
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advertisements. It is my judgment that if the defendant had merely stated that it ran the No 1 newspaper in the country, that would be mere puffing. But in this case, the defendant had made clear references to the plaintiffs' rival newspapers and made statements. It is for the court to find if such advertisements as referring to the plaintiffs are false. The plaintiffs say they are false, the defendant says they are true. It is not for me at this stage of the proceedings to make such a finding which ought to be the function of the trial judge. Even on the issue of malicious falsehood, the plaintiffs will have to prove that the words as contained in the advertisements are calculated to cause pecuniary damage. That again is for the trial court to ascertain.

I am guided by the well-known principles relating to the grant or refusal of an injunction. Both parties have shown that they are well established and well settled. If the plaintiffs succeed in both causes of action, the plaintiffs no doubt would be entitled to damages and also a permanent injunction. The grant of an interim injunction by me would no doubt have the effect of a permanent injunction, although I am aware that case law allows me to do so. However, it is my judgment that in this case the balance of convenience would best be satisfied if I leave the parties to maintain their present status quo. Since damages would be an adequate remedy, I do not think this case merits interference by way of an injunction. Enclosure 3 is thus dismissed with costs.

Application dismissed.

Reported by Wong Ee Lynn

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